

# The politics of cultural heritage protection in international law

## A new history crushing the narrative of a success story

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Every legal field has its own history and every history has its own master narrative, in the case of international law protecting cultural heritage it is a plain success story. International legal efforts to safeguard cultural goods and sites started in the interwar period. It was after the horrifying destructions of the First World War that internationalists and lawyers discussed how to efficiently protect artefacts of artistic and historical value. Legal provisions appeared to be at the center of these considerations. Several times during that period, the international museums office – an organization under the patronage of the League of Nations – commissioned leading international lawyers to draft conventions to regulate the conduct of warfare in a way that would spare artworks and monuments. The break out of the Second World War brought all of these efforts to establish such a legal framework to an abrupt end.

However, this is just one side of the history. In her [inaugural lecture](#) at the Collège de France (recently also [published in German](#)), the Berlin based professor of art history Bénédicte Savoy emphasizes a different historiography of world cultural heritage. Many histories of the legal „protection“ of cultural heritage gather around particular European experiences, such as the Thirty Years' War, the Napoleonic art plunder, and even the Two World Wars. But in whose collective memory for example is the work by the so-called monuments men in [Korea](#) after World War II present? Accordingly, the appropriation of artefacts in asymmetrical and colonial contexts is discussed among international lawyers only seldomly. There seem to be different reasons why these events are out of the jurist's scope. Most likely, it is due to the absent regulations and norms to deal with that topic and the problematic narratives of the legal field.

### “The Provenance of Culture”

Bénédicte Savoy earned a reputation as supporter of provenance research and as a main [critic](#) of the new [Humboldt Forum's](#) way of treating Germany's colonial past. Her main point against the current project concerns the move of the anthropological collections situated in [Berlin Dahlem](#) to the heart of Germany's capital without sufficient enquiry into its mostly problematic provenance.

Savoy's interventions ignited large debates in Germany about the nation's share in the colonial enterprises of the 19<sup>th</sup> and early 20<sup>th</sup> century. From [academic conferences](#), [newspapers contributions](#) to [TV shows](#), the cultural landscape of Germany is now discussing how to deal with its ambivalent history. This can also be considered as a significant opportunity to think about the intercourse with museums' collections and cultural property of unclear provenance in general. Globalization and the growing confidence of the former "colonized territories" will make these issues even more important in the future.

Therefore, it is also no surprise that the Paris born Savoy has chosen "Die Provenienz der Kultur" ("The Provenance of Culture") as the German title for her inaugural lecture. Beginning from Napoleon's spoliation of major European capitals, Savoy contextualizes the common narratives regarding the "[translocations](#)" – a neutral and descriptive term she introduces – of cultural heritage within Europe and to the old continent. The text comes as an invitation to the reader to reflect the often unthought histories and presence of cultural heritage in European museums.

In the inaugural lecture, Savoy also demands lawyers to take action. Legal scholars need to address the troublesome legacy of cultural heritage protection in international law. Which lessons can Savoy's narrative teach international lawyers?

### **The Primitive Accumulation of Cultural Capital in Museums**

Exotic objects have arrived in Europe in great amounts since the 18<sup>th</sup> century. The Roman and Greek antiquity were together with the Renaissance and Flemish masters the common reference framework for intellectuals in Europe. In consequence, collections of this shared "heritage" were established in the major metropolises Paris, London, Berlin, Vienna or St. Petersburg. The triad of museum, nation, and "patrimoine" was born and operated not just as a representation of a nation's identity, but also as justification narrative for acquisitions.

It was also at that time that the intellectual and the material appropriations of items were intertwined with each other. The possession of an artefact therefore also gave the entrance to its mental annexation. In addition, the developing modern humanities claimed to write the history of "barbarous" peoples out of their material remains. In this context, Savoy underlines that art history, archaeology or ethnology have never been neutral disciplines.

Nevertheless, Savoy recognizes the value and stimulation that radiates from such collections. In numerous examples, she explains how European artists draw their inspiration from these gatherings of artworks: The praise of the Pergamon Altar from [Guillaume Apollinaire](#), Richard Strauss' composition of *Kythereafter* seeing [Watteau's Isle of Cythère](#) during a visit to the Louvre, and André Derain's stimulation by "exotic" art in the British Museum. The cultural accumulations in museums certainly have their bright side. Stressing this ambivalent relation of appreciation and

problematization is the great achievement of Bénédicte Savoy in her research and deserves highest merits. What can be the lessons of all that for international law?

### **The Tasks of International Lawyers**

Bénédicte Savoy promotes four ways of introspection with a close relation to the law to endorse a more careful and accurate mode of dealing with the colonial pedigree of cultural heritage. Savoy also formulates in these four short points an agenda to correct the current attitudes towards cultural heritage and alterity. It is a plea to establish a true universalism of cultural heritage, a plea that particularly addresses lawyers and legal scholars. However, she abstains from concrete claims for the redistribution of cultural property:

1.) Language. According to Savoy, language mediates the “possession” of cultural property. Terms such as “patrimony” or “national heritage” indicate the possibility of acquiring and holding these items as an owner. Savoy correctly and importantly criticizes this. However, what she does not provide is a critical account that also addresses “universal” concepts of heritage that are often invoked in public discourses and legally enshrined by UNESCO in the [World-Heritage Convention](#) or the [Hague Convention of 1954](#). In particular, the end of colonialism produced new legal mechanisms in international law with a universal rhetoric. The use of such formulations was to cover hegemonic pretensions and the world heritage concept is a historical case in point. It originated from a concern that decolonized countries may not be capable of responsibly preserving their cultural remains and natural reservoirs. Thus, the veil of language needs also to be lifted to investigate the motives and interests behind a certain concept.

2.) Multiple visibility. Savoy’s argument here is that not only the artefact itself shall be presented in museums, but also how it found its way into the institution. Provenance research is the key to achieve this aim. Savoy, however, does not directly call for restitution. Rather, in order to solve potential conflicts, Savoy relies on 3.) Dialogue. Such an inclusive approach is praiseworthy, but may appear as a further delaying restitution claims. It is also not clear whether new institutions are needed to serve as dialogue platforms.

4.) New legal concepts. In Savoy’s mind, these dialogues should lead to new legal structures and forms of interaction between original and current possessors. This prudent assertion of Savoy unfortunately misses to establish what the renowned art and law scholar Erik Jayme has called “[narrative norms](#)”. It is a shared commitment that expresses a new common sense in a legal document. Similar to the [Washington Principles](#) as an example for such a narrative norm concerning Nazi looted artworks, a similar declaration would be a desirable instrument to start the challenging global process towards overcoming the past of colonial plunder in the postcolonial presence. These narrative norms could be the intersection point between moral obligations and the legal form.

## To Start With: New Narratives of International Law

As Bénédicte Savoy rightly pointed out, there is still a lot of work to be done by international lawyers. The first major project should be the revision of the legal history of this field. I suggest reassessing the traditional historiography by putting the development of the legal norms in context with the imperial and colonial project of the last centuries and the well-researched “standard of civilization” in international law. Investigating the discourse about “protection” norms reveals different roles that the law played in history. They served likewise as emancipatory reference point to (semi-)peripheral states, such as in Latin American countries in relation to the “civilized West” and as justification for appropriations, for example by Great Britain in India.

The narrative of progress for the legal field of cultural heritage protection in the history of international law thus does neither adequately express the current demands on nor the actual development of the legal norms. In order to meet the contemporary expectations of the global legal community, new narratives and a new doctrinal concept need to be established in close exchange between legal scholars and historians. Once, a fresh historical perspective is found, different legal challenges will be perceived and identified. Such a new self-understanding should provoke new international legal instruments, as the existing ones seem unlikely to settle most of present day’s conflicts. A critical endeavor that will occupy Bénédicte Savoy and other scholars certainly also in future.

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